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ABUL HASAN MOHAMED RASHID v. PP

HIGH COURT MALAYA, KUALA LUMPUR
ASLAM ZAINUDDIN JC
[CASE NO: 42-143-09-2011]
5 NOVEMBER 2020

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CRIMINAL PROCEDURE: *Jurisdiction – Sessions Court – Whether local limits of jurisdiction for Sessions Court in Peninsular Malaysia state-wise – Whether Kuala Lumpur Sessions Court had territorial jurisdiction to hear matter when offence committed in Johor Bahru – Whether matter should have been filed in Johor Bahru Sessions Court at first instance – Whether proceedings a nullity – Whether conviction and sentence ought to be quashed*

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The appellant was found guilty by the Sessions Court in Kuala Lumpur on the alternative charge under s. 409 of the Penal Code and sentenced to six years imprisonment. A stay of execution of the sentence was granted pending the outcome of the appeal in the High Court. The issue that arose was whether the trial should have taken place in Johor Bahru *id est* whether the Johor Bahru Sessions Court had the territorial jurisdiction to hear the case and not the Kuala Lumpur Sessions Court.

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Held (quashing conviction and sentence):

(1) This case was filed in the Kuala Lumpur Sessions Court presumably by virtue of Arahan Amalan Hakim Besar Malaya Bil 2 2008 (Chief Judge of Malaya's Practice Direction No 2 of 2008) which came into effect on 5 September 2008 which required all cases under the Securities Industry Act 1983 to be filed in the Kuala Lumpur Sessions Court. In *Sohoni's Code of Criminal Procedure*, 1973, 22nd edn, 2018, vol. 2 pp. 2331 & 2332 it is written (the equivalent section in the Indian Criminal Procedure Code is s. 177) "Crime is in its essential nature local, and the section adopts the common law of England that all crimes are local and justiciable only by the local courts within whose jurisdiction they are committed." (paras 3 & 5)

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(2) Looking at ss. 419 and 422 of the Criminal Procedure Code ('CPC'), whether the fact that the charges were filed in the Kuala Lumpur Sessions Court instead of the Johor Bahru Sessions Court amounted to merely an irregularity which could be cured or was an illegality which would render the trial a nullity, Sohoni states in the 22nd edn, 2018, vol. 4 of at p. 6314 (the equivalent sections in the Indian Criminal Procedure Code are ss. 462 & 465) "The section applies only to errors in procedure and not to substantial errors of law affecting the jurisdiction of the court. A defect in jurisdiction can never be covered under this section." Which brought this court to the Order made *vide* L.N. 421 of 1955 which clearly states that the local limits of jurisdiction for the Sessions Court in Peninsular Malaysia is state-wise *id est* for the Sessions

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Court in Johore - the territorial boundaries of the state of Johore and so on and so forth.This order came into force on 1 October 1955 and is still valid and subsisting. The Courts Ordinance 1948 was revised in 1972 and the subsidiary legislation made thereunder is still valid, in force and subsisting. (paras 3, 6 & 7)

(3) This court could not ignore the existence of the 1955 Order, which is still in force, in coming to its decision. The Sessions Court did not have the territorial jurisdiction to hear this matter as the offence was committed in Johor Bahru. This matter should have been filed in the Johor Bahru Sessions Court in the first instance. Therefore, the proceedings in the Sessions Court was a nullity and the conviction and sentence against the appellant was thus quashed. (paras 1, 16 & 17)

Case(s) referred to:
Hen Chean Seng & Anor v. PP [1983] 1 CLJ 230; [1983] CLJ (Rep) 163 FC ***(refd)***
Lim Hung Wang & Ors v. PP [2011] 7 CLJ 318 HC ***(refd)***
Manshor Omar v. PP & Another Case [2005] 1 CLJ 128 HC ***(not foll)***
PP v. Ng Lai Huat & Ors [1990] 1 CLJ 1190; [1990] 2 CLJ (Rep) 774 HC ***(refd)***
PP v. Segaran S Mathavan [2010] 2 CLJ 121 HC ***(not foll)***
Taman Rimba (Mentakab) Sdn Bhd v. Sin Yew Poh Tractor Works [2002] 2 CLJ 112 HC ***(refd)***
Tengku Abdul Aziz v. PP [1951] 1 LNS 126 ***(refd)***
Tengku Abdul Muiz Shah & Ors v. PP [1982] 1 LNS 91 HC ***(refd)***
Wong Pang Fing v. PP [1997] 2 CLJ Supp 291 HC ***(refd)***

Legislation referred to:
Criminal Procedure Code, ss. 180(3), 376, 419, 422
Federal Constitution, art. 145
Penal Code, s. 409

Code of Criminal Procedure 1973 [Ind], ss. 177, 462, 465

Other source(s) referred to:
Sohoni's Code of Criminal Procedure, 1973, 22nd edn, 2018, vol 2, pp 2331 & 2332

For the appellant - Muhammad Shafee Md Abdullah, Wan Aizuddin Wan Mohammed & Nur Syahirah Hanapiah; M/s Shafee & Co
For the prosecution - Mohd Hafiz Mohd Yusoff, Hasley Tajuddin & Raihanah Nadhirah Rafidi; DPPs

Reported by Suhainah Wahiduddin

JUDGMENT

Aslam Zainuddin JC:

[1] In this case the appellant (who was the second accused together with one Gordon Toh Chun Toh) was found guilty by the Sessions Court in Kuala Lumpur on the alternative charge under s. 409 of the Penal Code and sentenced to six years imprisonment. A stay of execution of the sentence was granted pending the outcome of the appeal in the High Court. Prior to this matter coming up for hearing before me, the first accused Gordon Toh had

passed away on 27 August 2012. After hearing submissions from both parties in this case, I quashed the conviction and sentence meted out on the appellant by the court below on the grounds that the Sessions Court did not have the territorial jurisdiction to hear this matter as the offence was committed in Johor Bahru. Therefore, this matter should have been filed in the Johor Bahru Sessions Court in the first instance. To understand the background of this case it is helpful to recapitulate the facts of the case as found by the learned Sessions Court Judge. This is what he said:

> [1] A premeditated white collar scandal executed with precision within the T + 3 days is how I would sum up this case. The *modus operandi* was very simple. The accused, Toh Chun Toh Gordan (first accused), a Singaporean, having dual degrees in Engineering and Economics from Southern California Pacific University, having a Masters in Business Administration, a former Midland Bank Group Regional Executive Director of South East Asia, former Regional Manager of Amco Merchant Bank, former Senior Regional Manager of Lloyds Bank International, bought over 11.1 million shares in Multi-code Electronics Industries (M) Berhad ("Multicode") using Ace Prelude Sdn Bhd ("APSB") as the vehicle. He then got himself appointed as the Executive and Non-Independent Director and the Chief Executive Officer (CEO) of Multicode and got the other accused, Dato' Abul Hasan bin Mohamad Rashid (second accused) together with two others as the directors of Multicode. Both the first and second accused were also appointed as the authorised signatories of the banking documents of Multicode. They then swiftly uplifted Multicode's fixed deposits ("FDs") in the tune of RM26 over million the very next working day without any mandate or approval of the Board of Directors of Multicode ("BOD") and used Multicode's monies to pay for Multicode's shares that the first accused purchased *via* APSB within the T + 3 days.

[2] The second accused was charged as follows:

> Amended Principal Charge
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> That you, between 26 March 2007 and 28 March 2007, at Kenanga Investment Bank Berhad (Company No: 15678-H) (formerly known as K & N Kenanga Berhad), Level 2, Menara Pelangi, Jalan Kuning, Taman Pelangi, 80400 Johor Bahru, in the state of Johor Darul Takzim, indirectly in connection with the purchase of securities namely 11.1 million units of Multi-code Electronics Industries (M) Berhad shares (hereinafter referred to as "the shares"), abetted Toh Chun Toh Gordon (Singapore Passport No: E0652347N) to engage in an act which operated as a fraud on Multi-code Electronics Industries (M) Berhad (Company No: 193094-K) by causing the uplifting of Fixed Deposits belonging to Multi-code Electronics Industries (M) Berhad (as per Appendix 1) amounting to RM18,146,168.74 out of which RM17,552,275.20 was subsequently paid to Kenanga Investment Bank Berhad (Company No: 15678-H), banking account no. 0001-312100888613 at Standard Chartered Bank Berhad, No. 2, Jalan Ampang, Kuala Lumpur, for the purchase of the shares by Ace Prelude Sdn Bhd (Company No: 734044-X) through trading account no: 3AC0027 with Kenanga Investment Bank Berhad (formerly known as

K & N Kenanga Berhad), which offence was committed as a result of your abetment and you have thereby committed an offence under Section 87A(b) read together with Section 122C(c) of the Securities Industry Act 1983 (Act 280) and punishable under section 122C of the same Act.

Alternative Charge

That you, between 23 March 2007 and 28 March 2007, at Multi-code Electronics Industries Sdn Bhd (Company No: 193094-K) Suite 11.2B, Level 11, Menara Pelangi, No. 2, Jalan Kuning, Taman Pelangi, 80400, Johor Bahru, in the state of Johor Darul Takzim, as an agent, namely a Director of Multi-code Electronics Industries (M) Berhad (Company No: 193094-K) and in such capacity entrusted with certain property (as per Appendix 2), amounting to RM26,045,473.94, had committed criminal breach of trust in respect of the said property, and you have thereby committed criminal breach of trust of the said property, an offence under section 409 of the Penal Code and punishable under the same section.

Appendix 1

No.	Bank	Fixed deposits	Total Upliftment
1.	RHB Bank Berhad	Account No. 3-01147-009413-9	RM504,958.91
2.	RHB Bank Berhad	Account No. 3-01147-009412-0	RM504,958.91
3.	RHB Bank Berhad	Account No. 3-01147-006780-8	RM500,000.00
4.	RHB Bank Berhad	Account No. 3-01147-006776-0	RM500,000.00
5.	RHB Bank Berhad	Account No. 3-01147-006778-6	RM500,000.00
6.	RHB Bank Berhad	Account No. 3-01147-006779-4	RM500,000.00
7.	RHB Bank Berhad	Account No. 3-01147-007518-5	RM500,000.00
8.	RHB Bank Berhad	Account No. 3-01147-007651-3	RM500,000.00
9.	RHB Bank Berhad	Account No. 3-01147-007519-3	RM500,000.00
10.	RHB Bank Berhad	Account No. 3-01147-007650-5	RM500,000.00
11.	Public Bank Berhad	S/N.I 636397	RM506,657.53
12.	Public Bank Berhad	S/N.I 636394	RM506,657.53
13.	Public Bank Berhad	S/N.I 636396	RM506,657.53
14.	Public Bank Berhad	S/N.I 636356	RM500,000.00
15.	Public Bank Berhad	S/N.I 366255	RM504,463.00
16.	Public Bank Berhad	S/N.I 636355	RM500,000.00
17.	Public Bank Berhad	S/N.I 366254	RM504,463.00
18.	Public Bank Berhad	S/N.I 636395	RM506,657.53
19.	Bank Kerjasama Rakyat (M) Berhad	No. Sijil 10305651	RM505,684.38
20.	Bank Kerjasama Rakyat (M) Berhad	No. Sijil 10305652	RM505,684.38
21.	Bank Kerjasama Rakyat (M) Berhad	No. Sijil 10305649	RM505,684.38
22.	Bank Kerjasama Rakyat (M) Berhad	No. Sijil 10305650	RM505,684.38

23.	Bank Kerjasama Rakyat (M) Berhad	No. Sijil 10305520	RM512,992.88
24.	Bank Kerjasama Rakyat (M) Berhad	No. Sijil 10305521	RM512,992.88
25.	Bank Kerjasama Rakyat (M) Berhad	No. Sijil 10305518	RM512,992.88
26.	Bank Kerjasama Rakyat (M) Berhad	No. Sijil 10305519	RM512,992.88
27.	Bank Kerjasama Rakyat (M) Berhad	No. Sijil 10305516	RM512,992.88
28.	Bank Kerjasama Rakyat (M) Berhad	No. Sijil 10305517	RM512,992.88
29.	Bank Kerjasama Rakyat (M) Berhad	No. Sijil 10218401	RM500,000.00
30.	Bank Kerjasama Rakyat (M) Berhad	No. Sijil 10218402	RM500,000.00

Appendix 2

No.	Bank	Fixed deposits	Total Upliftment
1.	RHB Bank Berhad	Account No. 3-01147-009413-9	RM504,958.91
2.	RHB Bank Berhad	Account No. 3-01147-009412-0	RM504,958.91
3.	RHB Bank Berhad	Account No. 3-01147-006780-8	RM500,000.00
4.	RHB Bank Berhad	Account No. 3-01147-006776-0	RM500,000.00
5.	RHB Bank Berhad	Account No. 3-01147-006778-6	RM500,000.00
6.	RHB Bank Berhad	Account No. 3-01147-006779-4	RM500,000.00
7.	RHB Bank Berhad	Account No. 3-01147-007518-5	RM500,000.00
8.	RHB Bank Berhad	Account No. 3-01147-007651-3	RM500,000.00
9.	RHB Bank Berhad	Account No. 3-01147-007519-3	RM500,000.00
10.	RHB Bank Berhad	Account No. 3-01147-007650-5	RM500,000.00
11.	Public Bank Berhad	S/N.I 636397	RM506,657.53
12.	Public Bank Berhad	S/N.I 636394	RM506,657.53
13.	Public Bank Berhad	S/N.I 636396	RM506,657.53
14.	Public Bank Berhad	S/N.I 636356	RM500,000.00
15.	Public Bank Berhad	S/N.I 366255	RM504,463.00
16.	Public Bank Berhad	S/N.I 636355	RM500,000.00
17.	Public Bank Berhad	S/N.I 366254	RM504,463.00
18.	Public Bank Berhad	S/N.I 636395	RM506,657.53
19.	Malayan Banking Berhad	Account No. 501299506866	RM9,000,000.00
20.	Malayan Banking Berhad	Account No. 501299506866	RM2,000,000.00
21.	Malayan Banking Berhad	Account No. 501299506866	RM6,000,000.00
		Total	**RM26,045,473.94**

(a) Multicode is a public listed company since 1997. Goh Tong Huat, ("PW1") together with his two brothers, Goh Chai Siong and Goh See Chuan were the main promoters and the brains of the company. Since listing, PW1 has been the Managing Director of Multicode. PW1 together with his wife owned 28.4% shareholdings in Multicode;

(b) towards the end of February or early March a lunch meeting took place at the Zone Hotel in Johor Bahru where PW1, Dr Goh Kar Choon ("PW6"), Nora Lam ("PW2"), Woo Chee Leong, the first accused and one Daniel Wong were present. During the meeting PW1 was informed by the first accused that he was a fund manager and had parked his money in Malaysia and is interested to buy PW1's shares in Multicode. PW1 was also informed that the first accused will use APSB as the vehicle to buy the shares and that the first accused is a representative of APSB;

(c) on 23 March 2007, PW1 sold his and his family members' shareholdings in Multicode amounting to 11.1 million shares to the first accused through APSB;

(d) immediately after the share transaction was transacted on 23 March 2007, Multicode's BOD's meeting was convened wherein PW1 resigned as a director of Multicode and the first accused was appointed as a director and the CEO of Multicode. In the same meeting the second accused was appointed as the director of Multicode. Both the accused were also made the authorised signatories of Multicode's accounts which included the fixed deposits (FDs);

(e) what is most pertinent to note of 23 March 2007 BOD's meeting is that no approval was sought or obtained to uplift the FDs nor was there any discussion held pertaining to the upliftment of the FDs;

(f) on 26 March 2007, PW1 handed over Multicode's FDs certificates to the first accused in the presence of the second accused, PW6 and Ang Ai Ling ("PW4");

(g) on the same day immediately after the handover, both the accused together with Winnie Tee Keng See ("PW5") went to Public Bank, RHB Bank, Maybank and Affin Bank and the Multicode FDs were uplifted and transferred to third parties accounts;

(h) the FDs in Public Bank, RHB Bank and Bank Rakyat were uplifted and transferred to Elliot Gordon Singapore Pte Ltd ("EGS") account which was maintained at Ambank, Kuala Lumpur. The total sum that was transferred to EGS was RM18,146,168.74;

(i) the first accused was the sole authorised signatory of the EGS account;

(j) after the transfer of RM18,146,168.74 to EGS account, upon the instruction and authorisation of the first accused a sum of RM17,552,275.20 was transferred to Kenanga Investment Bank Berhad's (formerly known as K & N Kenanga Berhad) ("Kenanga") account at Standard Chartered, Kuala Lumpur on 27 March 2007. This transfer of RM17,552,275.20 was made to Kenanga for the purpose of settling the payment for the purchase of 11.1 million shares sold by PW1 and his family members to the first accused *via* APSB;

(k) the sale and purchase of the shares was done *via* Direct Business Transaction ("DBT") whereby the day the transaction was transacted was on 23 March 2007 (Friday), also known as the 'T' day. The payment for the share transaction was required to be made to PW1 on a T + 3 days that is the transaction day plus three working days. Since the transaction date was 23 March 2007 (Friday) payment must be settled by the 28 March 2007 (Wednesday);

(l) the sum of RM17,552,275.20 that was transferred from EGS to Kenanga was then used to pay PW1 and his family for the settlement of the shares transaction. Kenanga had, on 28 March 2007 issued payment to PW1 and his family members for the sale of the 11.1 million shares; and

(m) it must be noted that in the subsequent BOD's meetings including the BOD's meeting held on 29 March 2007 both the accused did not inform the BOD that they had uplifted the FDs from Multicode's account and had transferred the monies to third parties' account.

Decision Of This Court

First Issue – Whether The Trial Should Have Taken Place In Johor Bahru Id Est Whether The Johor Bahru Sessions Court Has The Territorial Jurisdiction To Hear The Case And Not The Kuala Lumpur Sessions Court

[3] This case was filed in the Kuala Lumpur Sessions Court presumably by virtue of Arahan Amalan Hakim Besar Malaya Bil. 2 2008 (Chief Judge of Malaya's Practice Direction No. 2 of 2008) which came into effect on 5 September 2008 which required all cases under the Securities Industry Act 1983 (Act 280) to be filed in the Kuala Lumpur Sessions Court. This practice direction is a sequel to Chief Judge of Malaya's Practice Direction No. 3 of 2004 which was cancelled by the 2008 Practice Direction.

The Law

Subordinate Courts Act 1948 (Revised 1972) (Act 92)

Constitution and territorial jurisdiction of Sessions Courts

59. (1) The Yang di-Pertuan Agong may, by order, constitute so many Sessions Courts as he may think fit and shall have power, if he thinks fit, to assign local limits of jurisdiction thereto.

(2) Subject to this Act or any other written law, a Sessions Court shall have jurisdiction to hear and determine any civil or criminal cause or matter arising within the local limits of jurisdiction assigned to it under this section, or, if no such local limits have been assigned, arising in any part of Peninsular Malaysia.

(3) Each Sessions Court shall be presided over by a Sessions Court Judge appointed by the Yang di-Pertuan Agong on the recommendation of the Chief Judge.

(4) Sessions Courts shall ordinarily be held at such places as the Chief Judge may direct, but should necessity arise they may also be held at any other place within the limits of their jurisdiction.

The Criminal Procedure Code ("CPC") states:

Interpretation

2. (1) In this Code -

"local limits of the jurisdiction" of a Magistrate's Court means the limits of the ordinary administrative district in which the Court house is situated;

Criminal jurisdiction of Magistrates

9. Subject to the provisions of this Code every Magistrate shall have cognizance of and power and authority to -

(a) hear, try, determine and dispose of in a summary way prosecutions for offences committed wholly or in part within the local jurisdiction of such Magistrate and cognisable by such Magistrate;

[4] Even though the above provisions of the CPC talk about Magistrates, they apply equally to the Sessions Courts. (See *Tengku Abdul Aziz v. PP* [1951] 1 LNS 126; [1951] 1 MLJ 185).

Chapter XIV

Jurisdiction Of Criminal Courts In Inquiries And Trials

Ordinary place of inquiry and trial

121. Every offence shall ordinarily be inquired into and tried by a Court within the **local** limits of whose jurisdiction it was committed.

The Common Law principle is that all crimes are local and are justiciable by local courts within whose jurisdiction they were committed. This is embodied in section 121 of the CPC. Therefore, the competency of the court to take cognisance of or try an offence is determined by the place where the offence has been committed. (see *The Criminal Procedure Code A Commentary* 2nd Edition by Srimurugan Alagan). (emphasis added)

[5] In *Sohoni's Code of Criminal Procedure*, 1973, 22nd edn, 2018, vol. 2, pp. 2331 & 2332 it is written (the equivalent section in the Indian Code of Criminal Procedure, 1973 is s. 177):

Crime is in its essential nature local, and the section adopts the common law of England that all crimes are local and justiciable only by the local courts within whose jurisdiction they are committed (See *Mohd Yusufuddin v. Queen-Empress* 1898 ILR 25 Cal 20 (PC).

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Chapter XLIII

Irregularities In Proceedings

Proceeding in wrong place, etc.

419. No finding, sentence or order of any criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at, passed or made, took place in a wrong **local** area or before a wrong Magistrate or Court, unless it appears that such error occasioned a failure of justice.

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Irregularities not to vitiate proceedings

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422. Subject to the provisions contained in this Chapter no finding, sentence or order passed or made by a **Court of competent jurisdiction** shall be reversed or altered on account of:

(a) any error, omission or irregularity in the complaint, sanction, consent, summons, warrant, charge, judgment or other proceedings before or during trial or in any inquiry or other proceeding under this Code;

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(b) the want of any sanction; or

(c) the improper admission or rejection of any evidence,

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unless such error, omission, irregularity, want, or improper admission or rejection of evidence has occasioned a failure of justice.

(emphasis added)

[6] Looking at ss. 419 and 422 of the CPC, whether the fact that the charges were filed in the Kuala Lumpur Sessions Court instead of the Johor Bahru Sessions Court amounts to merely an irregularity which can be cured or is an illegality which would render the trial a nullity, Sohoni states in the 22nd edn, 2018, vol. 4 at p. 6314 (the equivalent sections in the Indian Code of Criminal Procedure, 1973 are ss. 462 and 465):

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> The section applies only to errors in procedure and not to substantial errors of law affecting the jurisdiction of the court. A defect in jurisdiction can never be covered under this section.

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Which brings me to the Order made *vide* LN 421 of 1955 which has clearly stated that the local limits of jurisdiction for the Sessions Court in Peninsular Malaysia is state-wise *id est* for the Sessions Court in Johore – the territorial boundaries of the state of Johore and so on and so forth. For ease of reference I set out below LN 421 the Courts Ordinance 1948 dated 9 September 1955:

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SUBSIDIARY LEGISLATION
FEDERAL

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L.N. 421.

THE COURTS ORDINANCE, 1948

(F.M. No. 43 of 1948)

IN exercise of the powers conferred upon him by sections 59 and 76 of the Courts Ordinance, 1948, the High Commissioner hereby makes the following Order:

1. This Order may be cited as the **Courts (Subordinate Courts) Order, 1955,** and shall come into force on the first day of October, 1955. Citation.

2. The Sessions Courts in the first column of the First Schedule hereto are hereby constituted and local limits of jurisdiction as set out in the second column of the said schedule hereto are assigned to each. The constitution and limits of jurisdiction of Sessions Court

3. The Magistrates' Courts in the first column of the Second Schedule hereto are hereby constituted and local limits of jurisdiction as set out in the second column of the said schedule hereto are assigned to each. The constitution and limits of jurisdiction of Magistrates' Courts.

4. All previous orders under sections 59 and 76 of the Courts Ordinance, 1948, are hereby rescinded. Rescission of previous Order

FIRST SCHEDULE

(Paragraph 2)

(1) Sessions Courts	(2) Local limits of jurisdiction
The Sessions Court of the State of Johore	The territorial boundaries of the State of Johore
The Sessions Court of the State of Kedah	The territorial boundaries of the State of Kedah
The Sessions Court of the State of Kelantan	The territorial boundaries of the State of Kelantan
The Sessions Court of the Settlement of Malacca	The territorial boundaries of the Settlement of Malacca
The Sessions Court of the State of Negri Sembilan	The territorial boundaries of the State of Negri Sembilan
The Sessions Court of the State of Pahang	The territorial boundaries of the State of Pahang
The Sessions Court of the Settlement of Penang and Province Wellesley	The territorial boundaries of the Settlement of Penang
The Sessions Court of the State of Perak	The territorial boundaries of the State of Perak
The Sessions Court of the State of Perlis	The territorial boundaries of the State of Perlis
The Sessions Court of the State of Selangor	The territorial boundaries of the State of Selangor
The Sessions Court of the State of Trengganu	The territorial boundaries of the State of Trengganu

SECOND SCHEDULE

(Paragraph 3)

(1) Magistrates' Courts	(2) Local limits of jurisdiction
The Magistrates' Court of the State of Johore	The territorial boundaries of the State of Johore
The Magistrates' Court of the State of Kedah	The territorial boundaries of the State of Kedah
The Magistrates' Court of the State of Kelantan	The territorial boundaries of the State of Kelantan
The Magistrates' Court of the Settlement of Malacca	The territorial boundaries of the Settlement of Malacca
The Magistrates' Court of the State of Negri Sembilan	The territorial boundaries of the State of Negri Sembilan
The Magistrates' Court of the State of Pahang	The territorial boundaries of the State of Pahang

(1) Magistrates' Courts	(2) Local limits of jurisdiction
The Magistrates' Court of the Settlement of Penang and Province Wellesley	The territorial boundaries of the Settlement of Penang and Province Wellesley
The Magistrates' Court of the State of Perak	The territorial boundaries of the State of Perak
The Magistrates' Court of the State of Perlis	The territorial boundaries of the State of Perlis
The Magistrates' Court of the State of Selangor	The territorial boundaries of the State of Selangor
The Magistrates' Court of the State of Trengganu	The territorial boundaries of the State of Trengganu

Dated this 9th day of September, 1955.

[RSC. 30a/46.]

By Command,

D. C. WATHERSTON,
Chief Secretary

L.N. 422.

THE COURTS ORDINANCE, 1948

(F.M. No. 43 of 1948)

IN exercise of the powers conferred by section 57 of the Courts Ordinance, 1948, I hereby direct that proceedings instituted in any Subordinate Court and not terminated before the coming into force of the Courts (Subordinate Courts) Order, 1955, shall be carried on in the corresponding Subordinate Court constituted by the said Order and any such proceeding may be amended as may appear necessary or proper.

L.N. 421/55.

Dated this 9th day of September, 1955.

[RSC. 30a/46.]

CHARLES MATHEW,
Chief Justice

L.N. 423.

THE POLICE ORDINANCE, 1952

(No. 14 of 1952)

IN exercise of the powers conferred upon him by section 26 of the Police Ordinance, 1952, the High Commissioner in Council hereby makes the following Order:

Citation.

1. This Order may be cited as the **Police (Service Outside the Federation) Order, 1955.**

Purpose for which police officers may proceed for service outside the Federation.

2. Police officers may, in the interests of peace and good order of the Federation, or in compliance with the request of the Government of the Colony of Singapore, of North Borneo or of Sarawak, or of the State of Brunei, proceed for service outside the Federation for the following purposes:

(*a*) Enquiries relating to the investigation of crime committed in the Federation;

[7] This order came into force on 1 October 1955 and is still valid and subsisting. The Courts Ordinance 1948 was revised in 1972 and the subsidiary legislation made thereunder is still valid, in force and subsisting.

[8] In the case of *Taman Rimba (Mentakab) Sdn Bhd v. Sin Yew Poh Tractor Works* [2002] 2 CLJ 112; [2002] 5 MLJ 321, James Foong J (as he then was) held:

> 'Local limits', according to Ms Goh, is set out in the High Court Practice Direction 4 of 1993. There, the then Chief Justice of Malaya assigned to the Ipoh Sessions Court the territorial jurisdictional areas of Ipoh, Batu Gajah, Parit, Kampar, Sitiawan, Lumut, and Pantai Remis.
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> These areas designated to the Ipoh Sessions Court are certainly not the place where the cause or matter in this action arose. It was in either Mentakab or Kuala Lumpur. Unlike the High Court of Malaya sitting in various capital cites and towns in Peninsular Malaysia, the Sessions Courts throughout the country do not enjoy concurrent territorial jurisdiction of each other. Though they are set up by His Majesty, the Yang di-Pertuan Agong under s. 59(1) of the SCA, territorial jurisdictional boundaries are allocated to them. This is declared in s. 59(2) of the SCA which says that the Sessions Court shall 'hear and determine any civil or criminal cause or matter arising within the local limits of jurisdiction assigned to it'. The High Court of Malaya does not have such restrictions except that it cannot go beyond the shores of the Malay Peninsular, vice versa with the High Court of Sabah and Sarawak whose territorial jurisdictional limits are confined to the two states in East Malaysia. But within each of the High Courts' territorial limits, a High Court Judge has concurrent and coordinate jurisdiction to try cases as his counter-part in another city or town where there is a High Court. The rationale for this is, as explained by Justice Lim Beng Choon in *Sova Sdn Bhd v. Kasih Sayang Realty Sdn Bhd* [1988] 2 MLJ 268 at p 270, the two respective High Courts have many branches. Thus, a judge sitting in the High Court of Malaya at Kuala Lumpur has the same power and right to try a matter or cause arising in another part of West Malaysia. This set up is therefore different from the subordinate courts. The subordinate courts have the restriction of local limits of jurisdiction assigned to them. When a cause or matter arises outside its local limits, then it has no jurisdiction to hear the substantive matter.

[9] In the case of *Tengku Abdul Muiz Shah & Ors v. PP* [1982] 1 LNS 91; [1983] 1 MLJ 422, Mohamed Dzaiddin J (as he then was) said:

> 'Subordinate courts' means "any inferior court from the decisions of which by reason of any written law there is a right of appeal to the High Court and means in relation to the High Court any such court as by any written law has jurisdiction within the local jurisdiction of the High Court".

A The constitution and territorial jurisdiction of both the Sessions and Magistrate's Courts are provided in the Subordinate Courts Act 1948 (Act 92). They have jurisdiction to hear and determine any civil or criminal cause or matter arising within the local jurisdiction assigned to them or, if no such local limits have been assigned, arising in any part of the local jurisdiction of the respective High Court.

B It is clear from the various sections of the two Acts considered above, the Sessions and Magistrate's Courts can exercise their functions on any cause or matter arising within their local jurisdiction.

[10] In *Wong Pang Fing v. PP* [1997] 2 CLJ Supp 291; [1997] 2 MLJ 151, Elizabeth M Chapman JC (as she then was) decided as follows:

C The appellant was charged under s. 33 of the Commercial Vehicles Licensing Board Act 1987 in the Magistrate's Court at Kuching. To this charge, he pleaded guilty and was convicted on his own plea and a fine of RM500 in default one month's imprisonment was imposed. It was further ordered that his motor van be forfeited. On appeal, learned D counsel for the appellant raised an interesting point, that the trial magistrate had no jurisdiction to hear the case as the offence was committed outside its jurisdiction.

The offence here was committed at 17th Mile Kuching/Bau Road, Bau, in the State of Sarawak. The issue before this court is whether the trial E Magistrate at Kuching had the jurisdiction to hear the case since the offence was committed in the District of Bau which had its own court house.

...

F In this instant case, the offence took place at the 17th Mile Kuching/Bau Road and the 17th Mile is well within the Bau administrative area. The trial Magistrate was, in this case, a resident magistrate in Kuching. The administrative district is constituted by the Administrative Areas Order GN 629/49 (as amended by Sarawak LN 54/83) made under the Administrative Areas Ordinance (Sarawak Cap 4). Under the schedule to that order, Bau District and Kuching are two separate administrative areas G of the First Division and the 17th Mile Kuching/Bau Road is well within the Bau administrative area.

Section 121 of the Criminal Procedure Code further provides that every offence shall ordinarily be inquired into and tried by a court within the local limits of whose jurisdiction it was committed and s. 122 provides that H when a person is accused of the commission of any offence by reason of anything which has been done and of any consequences which has ensued, such offence may be inquired into or tried by a court within the local limits of whose jurisdiction any such thing has been done or any such consequence has ensued.

I

> The trial Magistrate in this case was a resident Magistrate in Kuching and clearly had no jurisdiction to hear this case at the Magistrate's Court in Kuching as he had no jurisdiction over the District of Bau.

[11] Therefore, I have to respectfully differ with the decision in *PP v. Segaran S Mathavan* [2010] 2 CLJ 121; [2009] 9 MLJ 597, as well as *Manshor Omar v. PP & Another Case* [2005] 1 CLJ 128; [2005] 2 MLJ 344 and other similar cases on point.

Submission By The Securities Commission That Kuala Lumpur Is No Longer Part Of Selangor By Virtue Of The Constitution (Amendment) (No. 2) Act 1973 (Act A206), Therefore The Kuala Lumpur Sessions Court Should Have The Same Territorial Jurisdiction As The High Court In Malaya

[12] In my view, this argument is flawed because:

(i) The 1955 order has already spelt out the territorial jurisdiction of the Sessions Courts in Selangor which included Kuala Lumpur at the time. Act A206 is a declaratory Act and does not confer jurisdiction on the Kuala Lumpur Sessions Court. The *status quo* remains until amendments are made to the law.

(ii) In *Hen Chean Seng & Anor v. PP* [1983] 1 CLJ 230; [1983] CLJ (Rep) 163; [1983] 1 MLJ 297 the Federal Court held:

> The High Court has in this case made a reference to this court under section 48(4) of the Courts of Judicature Act 1964 on two constitutional questions:
>
> (1) Whether the Federal Territory is an integral part of Malaysia.
>
> (2) Whether the High Court in Malaya sitting in the Federal Territory is lawfully constituted.
>
> We should however add that in respect of the second question the answer is clearly provided for in the provisions of section 6(1) of Act A206 [as amended by the Constitution (Amendment) (No. 2) Act, 1976 - Act A335] which prescribes that *any written law existing and in force in the Federal Territory shall continue to be in force therein until repealed, amended or replaced by laws passed by Parliament.* The Courts of Judicature Act is such a written law existing and in force in the Federal Territory prior to February 1, 1974 and the local jurisdiction of the High Court in Malaya as defined in section 3 of that Act clearly applied to the Federal Territory when it was still within the State of Selangor previous to the operation of Act A206 and continues to so apply by virtue of the provisions of section 6(1) of Act A206. On the point taken in respect of Article 121(1)(a) of the Constitution as to the vesting of judicial power in the High Court in Malaya for the States of Malaya, Article 2(a) of the

A Constitution read in the light of the definition of 'State' in Article 159(6), Act A206 and the provisions of Article 1 of the Constitution, considered together and in that order, clearly manifest the position that the High Court in Malaya has jurisdiction in the Federal Territory, and in the event any contention to the contrary would seemingly divest the High Court B in Malaya of any judicial power or jurisdiction throughout the States of Malaya as Article 121(1)(a) of the Constitution specifically prescribes that the High Court in Malaya shall have its principal registry in Kuala Lumpur, the status of which is in issue in the questions referred to us. (emphasis added)

C (iii) The current and previous practice of the prosecution shows that the local jurisdiction of the subordinate courts is recognised. This can be seen for example in the recent case of a Member of Parliament who was charged in the Butterworth Sessions Court first and the prosecution then applied for the case to be transferred to the Kuala Lumpur Sessions Court. If D indeed the Kuala Lumpur Sessions Court has similar territorial jurisdiction as the High Court in Malaya, as submitted by the respondent, then it would not be necessary for the prosecution to file the charges in the Butterworth Sessions Court first. They could have filed the charges in the Kuala Lumpur Sessions Court directly.

E *Whether It Is Open For Me To Decide On This Preliminary Objection Again As The Issue Was Ventilated Before My Predecessor Brother Judge*

[13] In the case of *Lim Hung Wang & Ors v. PP* [2011] 7 CLJ 318; [2011] 9 MLJ 752, the applicants were the accused in a drug trafficking case before the High Court, which, at the end of the prosecution's case, found that a *prima* F *facie* case had been proved against them. Their defence was called pursuant to s. 180(3) of the CPC and dates were fixed for their evidence to be heard. However, before the defence could be heard, the applicants applied for the court to review its finding of a *prima facie* case.

G **[14]** The two main issues to be decided were as follows:

(i) whether the High Court has the power to review its own finding on *prima facie* case at the end of the prosecution's case; and

(ii) should issue (i) be answered in the affirmative, whether there were errors in the decision of the court in calling the applicants to enter their H defence.

Mohd Zawawi Salleh J (as he then was) opined as follows:

The burden rests upon the applicants to demonstrate the exceptional circumstances which warrant this court to review its own finding. To my mind, exceptional circumstances include: I

(a) discovery of a new fact not known by the court at the time it made the original decision;

(b) emergence of new evidence which could have a decisive factor in reaching the original decision;

(c) a material change in circumstances since the original decision; and

(d) a reason to believe that the original decision was erroneous or constituted an abuse of power that resulted in an injustice.

[15] In *PP v. Ng Lai Huat & Ors* [1990] 1 CLJ 1190; [1990] 2 CLJ (Rep) 774; [1990] 2 MLJ 427, Faiza Thamby Chik JC (as he then was) said:

> I have dealt here at length with the basic principle of hearsay evidence because I am of the view that the demands made by Jimmy Chua to PW13 formed the superstructure of the prosecution's case. I was wrong to admit the evidence of PW13 in relation to Jimmy Chua's purported demands in the early part of the prosecution stage. I therefore reverse my earlier ruling on this point and rule that those purported demands are inadmissible for being hearsay.

[16] Based on the above two cases of *Lim Hung Wang & Ors v. PP* [2011] 7 CLJ 318; [2011] 9 MLJ 752 and *PP v. Ng Lai Huat & Ors* [1990] 1 CLJ 1190; [1990] 2 CLJ (Rep) 774; [1990] 2 MLJ 427, I can revisit the issue. More so when the 1955 order was not brought to the attention of my learned brother judge. I cannot ignore the existence of the 1955 order, which is still in force, in coming to my decision.

Merits Of The Appeal

[17] Based on what I have adumbrated above, I don't have to go into the merits of the appeal. I therefore declared that the proceedings in the Sessions Court below were a nullity and quash the conviction and sentence against the appellant.

[18] On the issue of whether there should be a retrial or not, I declined to make a ruling on it as this is within the purview of the Public Prosecutor under art. 145 of the Federal Constitution and s. 376 of the CPC. I'm sure the Public Prosecutor in his wisdom will decide based on the law and public interest as well as the fact that this case had its genesis in 2007. In the event *cadit quaestio*.